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Kevin L. Smith

CLERK

of the supreme court,
court of appeals and
tax court

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Sherry Russell was convicted after a bench trial of forgery, a Class C felony,¹ and theft, a Class D felony.² Russell claims the evidence is insufficient. We affirm.

FACTS AND PROCEDURAL HISTORY

On May 23, 2006, Russell entered the Crown Liquors store at 1920 North Shadeland Ave. with Starla Holder (“Holder”) and an unidentified woman. The women cashed checks purportedly issued to them by Family Dollar. Russell and Holder each cashed checks in the amount of \$550.25. Each provided Crown Liquors with identification including their names, addresses, telephone numbers, dates of birth, Social Security numbers, copies of their drivers licenses, and thumb prints. Dennis Linderman, the Crown Liquors clerk who cashed the checks, asked what the women did at Family Dollar that paid so well. Russell and Holder replied they were managers.

The next day, the Crown Liquors manager, De Reimold, saw the checks and doubted their authenticity. Holder returned to the store that day and tried to cash a check in excess of \$2000, purportedly from Family Dollar. Reimold stated he would have to verify the check. Holder told Reimold no one was at the office to verify the check and she would take it somewhere else to cash it.

Reimold contacted the police, and Detective Dennis Grimmer learned neither Russell nor Holder were employed by Family Dollar. Family Dollar Indianapolis

¹ Ind. Code § 35-43-5-2(b).

² Ind. Code § 35-43-4-2(a).

Operations Manager Glenn Becker confirmed the checks cashed at Crown Liquors were not Family Dollar checks, noting they lacked the logo that appears on all Family Dollar checks. Russell claimed she had been hired to work from home, but Becker said Family Dollar offers no work-at-home employment.

DISCUSSION AND DECISION

When a conviction is challenged based on insufficiency of evidence, we do not reweigh the evidence or judge the credibility of the witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). “[W]e consider only the evidence that is favorable to the verdict along with the reasonable inferences to be drawn therefrom to determine whether there was sufficient evidence of probative value to support a conviction.” *Walsman v. State*, 855 N.E.2d 645, 648 (Ind. Ct. App. 2006). We must affirm “if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.” *McHenry*, 820 N.E.2d at 126.

To prove Russell committed forgery, the State had to show Russell, with intent to defraud, uttered a written instrument in such a manner that it purported to have been made: 1) by another person; 2) at another time; 3) with different provisions; or 4) by authority of one who did not give authority. Ind. Code. § 35-43-5-2(b). Uttering is the “offering of a forged instrument, knowing it to be such, with a representation that it is genuine, and with an intent to defraud.” *Miller v. State*, 693 N.E.2d 602, 604 (Ind. Ct. App. 1998) (citations omitted). To prove Russell committed theft, the State had to show Russell knowingly or intentionally exerted unauthorized control over property of another

person, with intent to deprive the other person of any part of its value or use. Ind. Code § 35-43-4-2(a). Russell contends the State did not prove her intent to commit either forgery or theft.

Russell notes she cashed only one check and relies on decisions where the defendants cashed forged checks on multiple occasions or as part of a scheme. *See Boney v. State*, 498 N.E.2d 67 (Ind. Ct. App. 1986) (Boney cashed a check from a group of checks stolen from a business' checkbook; four other checks were payable to Boney, but the business owner testified he did not sign nor authorize the checks); *Scott v. State*, 867 N.E.2d 690 (Ind. Ct. App. 2007) (Scott attempted to cash multiple checks as part of an email scheme involving financial scams). However, *Boney* and *Scott* do not require intent be shown through multiple acts or involvement in a scheme. *See, e.g., Sanders v. State*, 782 N.E.2d 1036, 1039 (Ind. Ct. App. 2003) (finding sufficient evidence of Sanders' intent to commit forgery based on a single check).

Intent to defraud may be proven by circumstantial evidence, "which will often include the general conduct of the defendant when presenting the instrument for acceptance." *Miller*, 693 N.E.2d at 604. Russell presented the check claiming to be a manager at Family Dollar, but she testified at trial that she had been paid for stuffing envelopes at home. Russell asserted she did not know the identity of the third woman who cashed a check with her, even though they all claimed to be managers at Family Dollar. Russell's intent to defraud could reasonably be inferred from that circumstantial evidence.

Russell also contends the State did not prove her intent to commit theft. As with intent to defraud, circumstantial evidence can be used to prove intent for theft. *Hayworth v. State*, 798 N.E.2d 503, 508 (Ind. Ct. App. 2003). The trier of fact may infer intent from the surrounding circumstances including the defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points. *Id.* Russell presented a fraudulent check to Crown Liquors in order to receive cash in return. She did so while representing she was a Family Dollar manager and without knowing a supposed fellow manager who was cashing a check at the same time. The circumstantial evidence supports a reasonable inference of Russell's intent.

The trier of fact "is entitled to determine which version of the incident to credit." *Scott*, 867 N.E.2d at 695. Russell invites us to reweigh the evidence and judge the credibility of witnesses, which we will not do. Accordingly, we conclude the evidence was sufficient to support Russell's convictions of both forgery and theft.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.